IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE

CRIMINAL WRIT PETITION NO.2988 OF 2005

Sadanand Shivaji Kadam ...Petitioner
Vs.
The State of Maharasshtra & Anr. ...Respondents

Mr.M.S.Mohite with Mr. S.V. Kotwal Advts. for Petitioner
Mr. V.B.Konde-Deshmukh, A.P.P. for the State

CORAM: B.H.MARLAPALLE & ROSHAN DALVI, JJ.
DATED: 1ST MARCH, 2006

P.C.

1. Heard Mr.Mohite learned Counsel for the Petitioner who is a retired Police Officer. In this petition filed under Article 226 of the Constitution, the Petitioner prays for directions to hand over the investigation into the complaint recorded as C.R.No.34 of 2004 at his instance at Haweli Police Station to the State CID.

2. It appears that in the incidence that had taken place on 10th February 2004 two separate C.Rs came to be registered i.e. C.R.No.34 of 2004 at the instance of the Petitioner and C.R.No.35 of 2004 at the instance of Mr.Anand Danke or his son Mr. Vishwajeet Danke. The Petitioner claims that in the said incidence he was also attacked and was shifted to the hospital at Yerwada Central Prison. The Police have investigated into both the complaints and

chargesheets have been filed. Sessions Case No.156 of 2004 arising from C.R.No.35 of 2004 and Sessions Case No.34 of 2004 arising from C.R.No.34 of 2004, are pending before the Sessions Court and the Session has not yet commenced. The Petitioner alleges that the investigation into C.R.No.34 of 2004 was not properly conducted and it was infact conducted behind his back and therefore, it is an eye wash. He claims that certain eye witnesses have not been cited in the charge-sheet and the names shown as witnesses in the charge-sheet would not be sufficient to prove his case.

3. As the charge-sheets have already been filed there is no question of handing over the investigation to the State CID at this juncture. Under Section 173(8) of Cr.P.C. the Investigating Agency has the powers to undertake fresh investigation or further investigation. The learned Counsel for the Petitioner invited our attention to the statements of Mr. Buran Mohiddin Shaikh and Mr. Abdul Bangi Nadaf. As per the petitioner they were the construction labourers working at the site when the incidence took place on 10th February 2004. We therefore, deem it appropriate that the statements of these two witnesses are recorded by the Investigating Officer in C.R.No.34 of 2004 afresh and their names are shown as additional witnesses in the charge-sheet already pending before the Sessions Court along with their statements. The

Investigating Officer shall also take steps to carry out spot panchanama in respect of C.R.No.34 of 2004 and submit the same along with his further investigation report to the Sessions Court. This shall be done as expeditiously as possible and preferably within a period of 6 weeks from today.

(ROSHAN DALVI, J.) (B.H.MARLAPALLE, J.)